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BEFORE THE

# Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Establishment of Rules and Policies for the  
Digital Audio Radio Satellite Service in the  
2310-2360 MHZ Frequency Bank

95-91  
) IB Docket No. ~~95-1~~  
) GEN Docket No. 90-357  
) RM No. 8610  
) PP-24  
) PP-86  
) PP-87

## REPLY COMMENTS OF MT. WILSON FM BROADCASTERS, INC.

Mt. Wilson FM Broadcasters, Inc. ("Mt. Wilson"), by its attorneys, hereby submits its Reply Comments in the above captioned proceeding.

1. Mt. Wilson, licensee of station KKGO-FM, Los Angeles, California, filed comments during the original filing period from the perspective of a large market, "niche" formatted station.<sup>1/</sup> DARS proponents, in their respective comments, claim that the new satellite-provided radio service will not harm the economic status of local terrestrial broadcasters because DARS cannot provide the local services that traditional broadcasters offer to attract local listeners and advertisers.<sup>2/</sup> Specifically, CD Radio, Inc. asserts that:

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<sup>1/</sup> KKGO-FM's programming format is that of classical music. The station engages in almost 100 percent local programming and is extremely active in community events by providing advertising time for local arts groups and promoting local cultural events free of charge.

<sup>2/</sup> Comments of CD Radio, Inc. at 54; American Mobile Radio Corporation at 18.

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Satellite radio is an inherently national service and therefore offers no competitive threat whatsoever to traditional radio stations' local programming strengths, such as local news, weather, traffic, school closings, personalities, sports, talk and the like. Satellite DARS licensees' lack of programming in turn means that licensees will not be able to compete against traditional broadcasters for local advertising revenue.<sup>3/</sup>

This self-serving argument, however, (1) conveniently ignores the "potential" of satellite radio to siphon audiences, the consequence of which will make terrestrial stations less attractive to advertisers (local and national); and (2) ignores the importance of national advertising sources, especially as to niche formatted stations, such as KKGO-FM which derives approximately thirty to forty percent of its total revenue from national sources.<sup>4/</sup>

2. Local terrestrial radio stations, especially niche formatted radio stations, struggle to attain the most microscopic of market shares. Indeed, KKGO-FM provides a perfect example as to this assertion. Despite being an *overpowered* Class B station (due to its grandfathered status), KKGO-FM holds only a 1.7 share in the Los Angeles FM market, the smallest audience share of any Class B station in the market.<sup>5/</sup> As Mt. Wilson stated in its original comments, small audience shares are not uncommon among the 50 classical music stations in the United States.<sup>6/</sup> With such a meager audience base, it logically follows that even the loss of a small fraction of the audience will adversely impact niche formatted stations.

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<sup>3/</sup> Comments of CD Radio, Inc. at 78. See also American Mobile Radio Corporation at 40; Digital Satellite Broadcasting Corp. at 23.

<sup>4/</sup> Among the national entities that advertise on KKGO-FM are Paine Webber, Mercedes Benz, BMW, United Airlines and Trans World Airlines.

<sup>5/</sup> During the last two years, the market share for station KKGO-FM has ranged from 1.4 to 1.9. The 1.7 market share constitutes a representative median.

<sup>6/</sup> Comments of Mt. Wilson FM Broadcasters at 3.

3. The argument put forth by Mt. Wilson in its original comments that, “any fragmentation of the station’s audience will reduce the station’s ability to serve the community” is not a novel one.<sup>7/</sup> In Comments filed by the National Association of Broadcasters (“NAB”), it was calculated that niche stations in larger markets would lose a significant number of listeners due to DARS.<sup>8/</sup> As NAB demonstrated, each DARS system would carry one to three channels of each of the more popular niche formats, such as classical music.<sup>9/</sup> Such fragmentation of audience combined with the competition for national advertisers (especially as to niche formatted stations which derive a substantial portion of total revenues from national advertisers) will obviously adversely impact the local station’s ability to serve its local community.

4. In light of the precarious financial situation that already faces most stations,<sup>10/</sup> the likely reduction in listenership and advertising revenues could prove fatal to a station’s existence. Although the proponents of DARS maintain that the service will not take away from the local advertising base that local stations have established, this is contradicted by a study done for the NAB, which shows that DARS proponents have:

[C]onveniently, but mistakenly overlook[ed] that satellite DARS will most definitely be competing for *listeners*, and unlike the digital audio service provided by some cable systems, will be competing for them during commutation time periods when terrestrial radio listenership peaks as well as during other periods of the day.<sup>11/</sup>

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<sup>7/</sup> *Id.*

<sup>8/</sup> Comments of NAB at 31.

<sup>9/</sup> *Id.* at Attachment 10 (Proposed Formats of DARS providers).

<sup>10/</sup> See Comments of NAB at Attachment 13. (Radio station financial picture study showing that over half of all FM stations lost at least \$10,000 in 1991).

<sup>11/</sup> Comments of NAB at Attachment 1, page 37 (Strategic Policy Research Study).

The reduction in overall listeners for each station will make it more difficult for stations to sell advertising time, especially at profitable rates.<sup>12/</sup> It is likely that the DARS operators' ability to provide classical music (over multiple channels) will result in listeners turning only infrequently to local stations for local information or specialty programming not provided by DARS, leading to reduced ratings, revenues and profitability for local niche stations.<sup>13/</sup> Thus, even if DARS is instituted only on a subscription basis, with no revenues coming from advertising, it will, nevertheless, impact the ability of local niche stations to carry promotions or provide free time for those entities wishing to target listeners of a particular format. More specifically, the reduction in advertising revenues will impede KKGO-FM from continuing its practice of donating substantial time and money to promote events of local importance. If stations such as KKGO-FM are forced to change formats in order to stay viable, the question is raised as to who will provide the extensive free advertising and promotion now offered. Obviously, not satellite radio.<sup>14/</sup>

5. CD Radio, Inc's tacit admission that satellite radio will compete with terrestrial radio for national advertising guarantees an adverse impact upon KKGO-FM, in that it will reduce the station's already small market share and, indeed, probably result in a format change. In its *Notice of Proposed Rulemaking*, the Commission estimated that local stations receive seventeen to eighteen

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<sup>12/</sup> See Comments of NAB at Attachment 1, page 38.

<sup>13/</sup> *Id.* at 31-32.

<sup>14/</sup> KKGO-FM is the only commercial, full-time class B station providing classical music to the Los Angeles community. Therefore, it is likely that a format change by KKGO-FM would cause a serious decline in the widespread promotion of cultural events to the city of Los Angeles and its adjoining areas.

percent of advertising revenues from national sources.<sup>15/</sup> However, as stated in its Comments, KKGO-FM (and many niche formatted stations) receive a much higher portion of advertising revenue from national advertisers, with figures running from thirty to forty percent. If DARS providers are not going to challenge local stations for local advertisers, then it is logical to assume DARS will make up the difference through a more aggressive campaign to attract national advertisers. This is likely to produce favorable results for both DARS and national advertisers, who will naturally be drawn to the ability of DARS systems to allow advertisers to reach listeners across the entire United States through one, low priced advertising buy. The “odd men” out will be local niche stations who will lose a substantial portion of their advertising base and the local community who may well lose their local stations.

6. The proponents of DARS have interpreted the likely changes to be made by terrestrial stations to avoid possible financial ruin as a result of DARS in a manner that is wholly inconsistent with the views presented by other analysts. The DARS followers state that local terrestrial stations will intensify the amount of local programming and advertising in an attempt to woo listeners away from the faceless, national satellite programmers, thereby furthering the public interest.<sup>16/</sup> However, the more likely scenario is that as these small niche formatted stations begin to lose money, they will begin to employ cost-cutting measures, such as canned, satellite-fed programming of their own, the immediate impact of which will actually reduce the amount of locally produced programming by local stations, including station originated promotions and free advertising of local events. This

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<sup>15/</sup> *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, No. 95-91 at ¶16 (June 15, 1995).

<sup>16/</sup> See Comments of CD Radio, Inc. at 47, Digital Satellite Broadcasting Corp. at 23.

view is supported by two studies offered by NAB.<sup>17/</sup> The result is that programming will actually move to the polar opposite of public interest local programming by instituting satellite-fed, network type programming interspersed with bits of local information “on the hour.”

7. Supporters of DARS have stated that allowing DARS to begin broadcasting subject only to minimal restrictions (i.e. no local advertisers) will be in the public interest because it will allow rural areas to receive high quality programming. They insist that the residents of these areas will also receive more local programming from their small market stations as a result. In fact, quite the opposite is likely to occur. As the Strategic Policy Research study indicates, implementing DARS without reasonable restrictions on its operation is likely to produce results of a magnitude completely inconsistent with the Commission’s desire to further programming in the public interest:

The irony is that the FCC’s efforts in expanding the number of competing stations have begun to prove counterproductive, at least in terms of the amount of local, community oriented programming. As stations have proliferated and audiences have fragmented, stations have been under greater and greater pressure to economize, often simply to survive. That pressure has translated into reductions in staff and in locally originated programming. So we increasingly confront the ironical situation of an extensive system of local broadcast system outlets created to promote the creation and distribution of locally oriented programming, actually transmitting ever growing amounts of non local programming under threat of competitive survival.<sup>18/</sup>

8. While immediate, wholesale implementation of DARS may provide more services to rural America, it would sound the death knell for local public interest programming by both small market stations and large market niche format stations such as KKGO-FM, resulting in a greater detriment to the public interest than the slight benefit it would provide. Any reasonable balancing

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<sup>17/</sup> See comments of NAB at Attachment 1, page 45; Attachment 9, page 11.


<sup>18/</sup> Comments of NAB at Attachment 1, page 45-46.

of the public interest factors dictates that the Commission must proceed cautiously so as not to destroy the ability of local terrestrial stations to continue to provide those benefits to the public, which are beyond the means of satellite radio. If DARS services are to be authorized, such operation should be made subject to regulations which will ensure the preservation of local radio. An all subscription service; an initial restriction to limit DARS operation to receivers not intended for motor vehicles; commencement of DARS service conditioned upon a functional terrestrial radio in-band, digital operation; a proscription against DARS utilization of terrestrial repeaters. These reasonable restrictions will, to some degree, lessen the impact on terrestrial radio.

9. The public interest standard contemplates more than the mere provision of multiple audio entertainment services. Local radio is the "backbone" of the American broadcasting system, indeed, effectively a primary tool for implementing the Commission's public interest standard. Satellite radio will neither respond to nor serve local community needs. Reasonable regulations, such as those propounded by Mt. Wilson, are necessary to protect the public interest standard.

Respectfully submitted

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